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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/527,835

09/06/2005

Roland Stangl

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23552 7590 12/21/2010  
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EXAMINER

LOUIS, LATOYA M

ART UNIT

PAPER NUMBER

3771

MAIL DATE

DELIVERY MODE

12/21/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/527,835	<b>Applicant(s)</b> STANGL, ROLAND	
	<b>Examiner</b> LaToya Louis	<b>Art Unit</b> 3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 March 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

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### **DETAILED ACTION**

1. This office action is responsive to the amendment filed 8/20/2010. As directed by the amendment, claims 1, 9, and 12 have been amended and no claims have been added or cancelled. Thus claims 1-14 are currently pending.

### **Drawings**

2. The drawings are objected to because the empty boxes in figs. 1 and 2 lack descriptive text labels. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### **Specification**

3. The disclosure is objected to because of the following informalities: “claim 1” is recited on page 2, paragraph 4 of the disclosure. Claim numbers should not be referenced in the specification because they often change during prosecution. Appropriate correction is required.

4.

### **Claim Rejections - 35 USC § 103**

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stenzler (6,435,175) in view of Grey (7,111,756).

Regarding claims 1-5 and 13, Stenzler teaches in fig. 1 an aerosol therapy device having a nebulizer (50,70) in which the nebulizer comprises: a controllable aerosol generator (i.e. pump 92 or element 100) and a control unit (4) at least one sensor device (58) for generating at least one therapy-relevant measuring signal during therapy related to aerosol production and aerosol consumption (col. 5 lines 53-57 disclose that the inhalation sensor 58 generates inhalation data as therapy relevant measuring signal. Although this signal is used to start the nebulization therapy as therapy that is related to aerosol production and consumption, the inhalation sensor is still capable of sensing inhalation as the patient breathes during the therapy because it is an inhalation sensor. Further, col. 6 lines 14-18 disclose that the sensor device generates signals via the

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controller related to dosage counting/measuring as therapy relevant measuring signal which occurs shortly after the start of therapy. Alternatively, the measured time between dosages as therapy relevant measuring signal) a processor (It is inherent that the nebulizer includes a processor i.e. microprocessor 154) for generating therapy data by the signal based processing of the at least one measuring signal (col. 5 lines 53-56, col. 6 lines 1-6), a communication device (i.e. cable 22 or electric connector 54 as communication device) for transferring the therapy data processed in relation to signals to and from the nebulizer and for receiving control data transmitted from the control unit (4) to the nebulizer (col. 3 lines 47-51), and a controller (i.e. 76) for activating and controlling said aerosol generator (col. 4 lines 63-65) based on the control data received from the control unit (4), the controller comprising a preset controlling the nebulizer if no control data is received (col. 2 lines 31-36). Alternatively, a processor and controller in the form of a programmable chip (76) that is also a communication device in that it can send data from the nebulizer to the control unit (4) via a data line (60) and can use a connection means (98) to actuate the electrically operated membrane aerosol generator (100) (col. 4, lines 63-65) from data received from the control unit (4).

Stenzler teaches that the control unit (4) comprises communication devices (60,158) for receiving and transmitting data to and from the nebulizer unit (col. 6, lines 23-24) and a device for generating control data that comprises a microprocessor (150) that processes data from the sensor (58) and transmits control data to the nebulizer to actuate the pump (col. 5, lines 47-50; column 7, lines 8-10) and a card reader microprocessor (152) (col. 5, lines 61-62) but does not disclose that the control unit is a PDA. However, Grey teaches a dose dispensing apparatus wherein a PDA is in communication with a hand held dispensing device (col. 3, lines 30-34),

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wherein the dispensing device could include an infrared communications port (col. 3, lines 34-36). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the aerosol therapy device of Stenzler with a PDA control unit as taught by Grey in order to provide the advantage of using a common programmable computing device to control the device.

Regarding claims 6, 7, and 8, Stenzler teaches microprocessors (150, 152) and storage units (154) that are programmed to process data from the inhalation sensor (58) and information storage element (78) and control the functions of the device by communicating with components of the device (col. 5, lines 47-67).

Regarding claim 9, Stenzler teaches a displace unit (10) that is controlled by the control unit (150) (col. 6, lines 35-37).

Regarding claims 10 and 14, Stenzler teaches a telecommunication module (32) for a remote data connection (col. 3, lines 40-47) that could include the internet (col. 7, lines 48-55).

Regarding claim 11, Stenzler teaches an information storage element (76), analogous to a memory card, which can be programmed with medicine and dose information (col. 4, lines 20-39) and which is read by a card reader (152) on the control unit (4).

Regarding claim 12, the combination of Stenzler and Grey discloses the claimed invention wherein a control means (57) of the dispenser, as taught by Grey, allows activation of the dispenser (1) when it is not in receiving any control data from the communication device of the PDA (col. 5, lines 53-63).

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### **Response to Arguments**

7. Applicant's arguments with respect to claims 1-14 have been considered but are moot in view of the new ground(s) of rejection.

### **Conclusion**

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaToya Louis whose telephone number is (571) 270-5337. The examiner can normally be reached on Monday-Friday, 8:30am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/LaToya Louis/  
Examiner, Art Unit 3771  
12/15/2010

/Patricia Bianco/  
Supervisory Patent Examiner, Art Unit  
3772